THE SANCTIONS OF INTERNATIONAL LAW.

THE unhappy condition of Europe at the present time seems at first sight to be the negation of the whole idea of International Law. Nothing, however, could be further from the truth.

International Law consists of rules, some written as the result of treaties and conventions, others existing, in a state of embryo, in its theory and principles, and regulating the relations between different countries, just as the internal laws of a country regulate and govern the relations between individuals themselves, or between individuals and the Government under which they live.

At the base of all human society we find the family, which is merely the aggregate of certain individuals living under the same roof, united by family ties and under the authority of the head of the family, who can, to some extent, lay down the law and enforce obedience to it. Similarly, the State is only the aggregate of the families living upon its soil, and the head of the State or the constituted authorities impose their laws and give them sanction. The world, in its turn, is only the aggregate of the different peoples and States of which it is composed, and it also must have laws to regulate relations between the various members of this great human family.

The function of Governments is to safeguard the interests of the inhabitants of the countries which they govern, but their duty does not end at the frontier; a State cannot abandon its subjects the moment they have passed the geographical limits of its jurisdiction; it is bound to secure their well-being, wherever it may please them to take up their abode. It is this obligation which has given rise to international arrangements between different States, for the mutual protection to person and property of their respective subjects. From another point of view, States, acting as individual members of an international society, must guard their security as States, and thence arise conventions and international arrangements of a public nature, which have in view the existence, the integrity and the interests of nations.

It is International Law which forms this universal code, this "world law," and according as it concerns the interests of private persons or the interests of States as a whole, do we have Private International Law or Public International Law. The head of this International society is not, and indeed should not be, any individual, for this society and this law are under a governor before whom every other authority must bow down—"Justice" herself. It is justice which should inspire treaties and conventions, which should cause them to be respected; which, in absence of written law, should inspire, complete and interpret International Law.

At the present time, just when one would have expected that this new science should be sharing in the great forward movement of the day, is it true, on the contrary, that this whole edifice so laboriously scaffolded is crumbling to dust? Is it true, as has been sometimes stated, that International Law is so feeble, so little adequate to its mission, that all efforts to reconstruct and complete it after this present shock are bound to end in failure? No, it is not true.

To convince oneself of this, it is enough to read, to listen, to look around one. Formerly many people were ignorant that such a science existed, to-day all are talking of it; formerly its utility was denied, to-day its necessity is admitted; formerly its efficiency was doubted, to-day means are being sought to strengthen it; even when this law is violated a pretended justification is offered for such violation—proof positive that the law exists and cannot be disregarded; finally, all points of obscurity or uncertainty in this law are now being considered and discussed, doctrines and principles are being invoked for its explanation and interpretation, and the completion of international legislation is being prepared in the light of the terrible experiences through which the world is now passing.

From the moment that International Law exists, its sanction exists side by side with it. What is the good, it is asked, of discussing International Law when this law is being violated constantly and deliberately? Granted! But such discussions are helping to prepare its sanction and to bring to light its violations. Besides, does law within a country cease to be sanctioned and to be enforced because it is violated? On the contrary, severity is doubled in proportion to the increase of such violations. There may be a long struggle before a criminal is brought to justice,

but he is bound to be captured in the long run, and then the sanction, which has already been discussed, can be applied to the trial of his misdeed.

It is true that this question of the sanction of International Law has never been included in the programme of a conference. Certain diplomatists have been afraid to insert measures of coercion in treaties and conventions issued by Peace Congresses, considering that these measures of coercion, these sanctions, would only result in the creation of new motives for future wars, to be waged for the benefit of any injured party. This objection was set on one side at the Hague Conference of 1907, when, in the form of an amendment, a sanction was proposed and adopted. Indeed, even were the fear of these diplomatists justified, the principle would have to be accepted nevertheless, for it would help to render only just wars possible—in itself a considerable step in advance. But emphatically it can be asserted that such fear is groundless.

It is, in fact, one of the characteristics of law to find its chief power in itself and to be able to impose logical consequences with an inflexible rigour. Even if the sanction is not expressed, none the less does it exist; for no legal principle can be asserted without such principle giving rise immediately to sanctions, which follow simply as so many moral necessities, arising by the natural connection between cause and effect from the reciprocal obligations consecrated in every treaty. Thus, from the moment that a law exists, the sanction of it exists also as an inevitable result, and all that a legislator can do in conferences and conventions is to give concrete form to such sanction, by declaring when and how it shall be applied.

What, then, are the present sanctions of International Law?

The ultimate and most powerful sanction is, and always will be, the employment of force.

In civil societies law must be respected because it is the law; and it is the law because—in the case of civil law—it springs from an agreement freely concluded between the people and the national representatives charged with the duty of legislation; and—in the case of criminal law—because it is the result either of general principles of natural law, or of the necessity of enforcing obedience to civil law, for the maintenance of public order. When law is broken, the constituted authority redresses the wrong by punishing the wrongdoer; should the wrongdoer resist authority,

authority can employ force to defend the law and to cause it to be respected. This will always be the case, for law will always be broken.

International Law, in like manner, springs from conventions and treaties freely concluded between different parties, and legally binding upon them; but it may have been in vain that nations have come to terms, have drawn up treaties and agreed to conventions; for, just as an individual may violate his national law, so one of these international individuals may cease to respect the law which he has freely established, the treaties and conventions which he has signed, and the general principles of justice which follow as a natural consequence. This will mean the overthrow of international order, the wrong will have to be redressed and the wrongdoer punished. If, then, this world society demands reparation, and the violator refuses and resists, what is there left but the employment of force?

The present war supplies us with a striking example of force put at the service of violated International Law. Have we not seen a country, guarantor of the neutrality of Belgium, draw its sword from the scabbard in defence of this violated neutrality?

Five great countries guaranteed to one small country its perpetual neutrality. Four of these countries have quarrelled and are now at war. France and Russia may, and should, include as the second clause in their programme the restoration of Belgium, for they were guarantors of it; but the violation of Belgian neutrality was not the determining cause of their action. The fifth guarantor, standing for the time being outside the quarrel, alone had a real opportunity of enforcing the sanction of this violation of International Law; it granted the offender twenty-four hours in which to repair his fault, threatening him with the sword; the offender refused, and the sword of England has been drawn. Since then we have seen the cause of Belgium so intimately bound up with that of the allies, that the three countries, faithful guarantors of her neutrality, have sworn, in accordance with their treaties, never to sheathe the sword until Belgium shall be restored to her old position and the guilty party punished.

At the present moment we see how international justice, having vainly called the criminal to order, is punishing this violation of an article of her own law. The fortune of war may be uncertain; it may be maintained that other aims, directed to their own

interests, are being pursued by the allied powers, but, however this may be, such aims were not the determining cause of their action; they were seeking no opportunity to realise them, and were themselves the attacked, not the attackers. The central fact stands out incontestably; one of the great nations of the world, drawing in its wake the two other nations, which had already been attacked, is defending, sword in hand, broken law and violated justice.

What we need in the future is an International Law so strong that every article of its code concerning one of its members shall be obligatory on all; we need a bond so close between international individuals that the fault of a single one shall be reproved by all, and that even those powers which are not directly concerned shall unite in a solid mass to threaten any breaker of the law.

Such a state of things is not a Utopia! If nations make treaties amongst themselves, the actual points which they settle may be for those powers which have taken no part in them *res inter alios acta;* but for themselves—members of this universal society—their chief interest must be to secure respect for such treaties, conventions and signatures, and in virtue of this all have the right and the duty to interfere, so long as they are endeavouring to render international justice possible and to prevent an outbreak of brutal force employed in the service of injustice.

All of us, at one time or another, must have been present at the arrest of a malefactor by the agents of the public authority. Often we have seen such malefactor resist, hit out, struggle, attempt to escape; but with the arrival of other police on the scene he ceases to struggle, he can see at a glance the uselessness of resistance, and he submits. All nations must act towards the international malefactor as the police do towards the individual criminal.

A second sanction of International Law is the moral sanction.

Public opinion, that ruler of the world, an author once said, were it only well-informed, would be sufficient to secure obedience to all the regulations and to all the judgments of International Law. That is true enough, and again in our own day, we can find a proof of the importance of this moral sanction.

In every country of the world, where the truth is known, public opinion is horrified at the present violations of International Law. This moral sanction, however, always runs the risk of losing its complete force, so long as the "press" can put itself wholly at the

service, not of truth, but of a party. Confidence in the critical sense and in the love of justice of the people will be rudely shaken whenever public opinion allows itself to be led astray by popular passion, stirred up by this party press.

The present belligerents are perfectly alive to the importance of this moral sanction. In every country we see how public opinion is being courted and is being influenced. We see Press campaigns instituted, war literature published, propagandists active, envoys sent on missions, commissions formed, newspapers taken over at a high price—all with the object of conciliating public opinion, of concealing the truth, of justifying actions; or it may be with the nobler object of bringing the real truth to light. The gigantic proportions to which this propaganda has been carried shows us two things: the importance to the injured party of enlightening the opinion of the people, and the necessity for the guilty party to produce justifications, to conceal the truth and to conciliate popular sympathy.

As a result of this, in many places, the truth is not known, and wherever the press of the guilty party has been most active, there opinion has been most deceived and led astray. Moreover, so difficult is it to arrive at any conclusion amongst such a mass of literature, that people are inclined to let themselves be taken in by false information, and under the added influence of passion their tempers are inflamed, and they take their stand on one side or the other, refusing any longer to seek for truth, since they have made up their mind to accept as such some theory, whatever it may be.

Such a situation, however, cannot be permanent. Truth will triumph in the end, and once known, it will force itself upon all with invincible power, and will sweep along with it the whole civilized world. Even now, little by little, we see the truth coming to light; slowly but surely it is filtering through the network of lies and calumnies, and in every country in the world men blame and reprobate the international crimes which are being committed day after day. Every new crime lets a little more light in upon the world, and the violence and brutality of these crimes are a sure presage of the just estimate which will be formed of them by popular opinion.

If some day the progress of international order allows us to see the establishment of a Court for the enforcement of World Justice, rendered obligatory by the conscious will of every nation,

we ought at the same time to see the appearance of an official international organ, which would be for the world what official newspapers are for the nations. International Law, treaties and conventions would be published in it; public opinion would be enlightened by it as to what is passing in Government offices and diplomatic circles, the actions of each State would be described in it, so that any crimes or violations of law would be open and incontestable, and an enlightened public opinion would perforce be created. Should that day come the world would at once judge and pass sentence upon any guilty party; no longer would it be possible for such a one to distort facts and to mislead popular judgment.

We come now to the material sanctions of International Law. Sometimes amongst these sanctions have been reckoned certain fundamental regulations of International Law; such, for example, as the regulation laid down by the convention known as "Laws and Customs of War," which declares that only members of the regular forces shall be treated as prisoners of war, and that civilians found with arms in their hands shall be considered as brigands; the regulation according to which ambassadors are declared inviolable; the regulation prohibiting the imposition of collective penalties upon the population of an occupied country; the regulation contained in the convention concerning "the Rights and Duties of Neutrals," which decides that neutral countries must lose their right to the title if they act in any manner which favours one or other of the belligerents; and so on. Strictly speaking, however, these are not sanctions, but rather imperative commands or prohibitions laid down by the law itself, and the proof that they are not sanctions lies in the fact that it is possible for the belligerents to apply these rules, either with precision and thoroughness, or in so unsatisfactory a way that a sanction is needed for such defective and illegal application and for the redress of the grievances resulting therefrom. Thus when criminal law declares that he who wilfully causes a fire is an incendiary, it defines a crime and thereby sanctions a legal principle, as all law does; but on the other hand, when the law adds that the incendiary must be condemned to a term of ten years' imprisonment, the actual law is sanctioned. All the commands which the law itself lays down are not, strictly speaking, sanctions of the existing International Law; they are concrete expressions of legal principles, which approve and sanction these principles

by defining the crime, but do not constitute the final sanction for the application of such principles.

We have, however, other material sanctions, which are of considerable importance in the present stage of civilization—namely, reprisals.

Reprisals can be either military or economic; sometimes they can be both at once. Reprisals are purely military when they consist of an armed expedition, a declaration of war, a renewal of hostilities or any other act directed solely against the military organisation of a country. Such reprisals tend to be merged into the employment of force, of which we have spoken earlier. Economic reprisals are those which have no military object, but aim at striking the guilty party through his economic interests, his imports and exports and his commercial relations; such, for example, are the closing of frontiers or the expulsion of inhabitants. Finally, reprisals are often mixed, in the sense that it is possible by means of military operations to produce economic results, as, for example, in the case of a siege or a blockade.

In theoretical writings, this sanction of International Law has been much criticised, because, as has been said, it always involves the suffering of the innocent with the guilty. It cannot be denied that this is often the case. At the same time, it must be admitted that International Law, faced with the risk of being completely ignored, is bound to make use of the only resources at its disposal; these resources will improve in proportion to the improvement in the law itself. Further, it must not be forgotten, that if just reprisals may sometimes involve the punishment of the innocent with the guilty, such reprisals are always necessitated by actions which themselves have injured the innocent; moreover, it must be noted that this undeserved punishment inflicted on the innocent can be mitigated or even wholly avoided by the way in which the reprisals are carried out; finally, the responsibility for these reprisals and their consequences rests with the guilty violator of the law, who has rendered them necessary.

In the present war this sanction is being applied with all its force. The English intervention was the first military reprisal directed against the country which had violated the neutrality of Belgium; the blockade of Germany was the second. From the moment that war was declared, that country which possesses maritime supremacy has full right to prevent munitions of war

and other articles necessary for military operations from entering the enemy's ports; when the enemy, unable to hinder this by honorable warfare, retaliates by acts of piracy and barbarism, attacking the lives and property of non-combatants, this constitutes a deliberate, flagrant and persistent violation of the International Code as well as of the unwritten law of nations, which requires punishment, and fresh reprisals constitute that punishment. A nation which so openly violates International Law has practically forfeited all legal protection, and so long as it continues such action it must be put under the ban of other nations; it must be besieged and blockaded.

The time has certainly not yet come when the violation of International Law will fall necessarily under the ban of the whole civilized world; we have seen already that the bond of international solidarity and the conscience of nations are not yet strong enough for this; but whilst we await this consummation, both belligerents and neutrals—the former fully, the latter within the limits of strict neutrality—can make the guilty nation realise what it costs to tear up treaties and to act as barbarians and pirates. The reprisals of this present war are bound to affect economic relations; for the more the guilty nation is isolated, the more will follow the seizure by others of its industries and its foreign trade; and slowly but surely the way is being paved for an economic war which will outlast the war of arms, and will destroy to a great extent the economic strength of the guilty country as the armies of the allies will destroy its military power.

Let us hope that a day is coming when such measures will be universal, when every State and every nation will close their frontiers to the subjects and to the goods of any country which has violated International Law. If international economic relations, so important so far-reaching and so vital in our day, were threatened, and the prosperity of a country thus sapped at the root, reflection would be forced, if not upon the rulers of that country, at least upon the people whose interests were most directly affected.

The country, which at the present moment has thus put itself outside the pale of the law, dared at one time to declare that it had no need of human sympathy, that, being sufficient in itself, it could mock at the reprobation of the world. Nevertheless, it has undertaken the most vehement and the most extensive propaganda in order to win over public opinion; everywhere it

has sent its delegates and scattered its tracts, journalists and scholars have been taken into its pay. Actions so contrary to its assertions prove that it is no longer possible for one nation to endure isolation from the rest of the world, and that the prospect of such a punishment would be appalling.

Finally, there is the important material sanction which was accepted by the Convention of the Hague in 1907.

This sanction differs essentially from all the others, because it is not merely the necessary result of a breach of the law, but it has been given concrete shape by the law itself. This sanction differs again from the others, because it cannot be immediately applied as they can; it is in suspense until the close of hostilities, and is then intimately bound up with the victory of the injured party. It again is of considerable importance in the present war, because it aims at making good to individuals the damage caused them by the violation of the law. In the present war such damage has been enormous, for never before has the mania for destruction for pillage and for theft been carried so far.

This sanction had never figured in the programme of any International Convention, for reasons which we have explained earlier, but nevertheless it was introduced into the law of nations in 1907.

When in 1907 the Hague Conference proposed to adopt the text of the regulation known as "Law and Customs of War," which had been drawn up in 1899, certain amendments were suggested, and one of these amendments advocated the introduction of a sanction for a breach of the law. This amendment was brought forward by the German delegate, Major von Gündell, and below is the text of what he proposed: "31 July, 1907; 2nd Commission; 1st Sub-Commission; amendment proposed by the German deputation: Article 1. 'Any belligerent party which shall violate the provisions of this present law to the prejudice of neutral persons, shall be bound to compensate such persons for the wrong thereby caused them. It shall be responsible for all actions committed by any persons forming part of its armed forces. The estimate of the damage caused and of the indemnity to be paid, unless immediate compensation in kind is contemplated, can be postponed until later, if the belligerent party considers that the making of such an estimate is incompatible, for the moment, with its military operations.

"Article 2. In the case of a violation of the law to the prejudice of persons belonging to the hostile party, the question of

indemnity shall be considered at the date of the conclusion of peace."

This amendment was brilliantly supported by the German and Swiss delegates, and as far as the principle was concerned, it met with no opposition. Its justification was admirably summed up in the following speech of the German delegate: "I will venture to explain," he said, "the motives for the German proposal, which aims at completing the regulation concerning the laws and customs of land warfare, by the additions of provisions to meet the case of any violation of this regulation. The necessity of guarding against such an event may perhaps be questioned, on the ground that there should be no doubt as to the firm intention of the Powers signing an International Agreement to comply with the rules which they themselves have laid down. I need hardly say that it has never occurred to us to doubt the good faith of these Governments. In fact, any provision against an infringement of the law would be out of place, were the obligations such that their execution depended solely on the will of the Governments. In this case, however, it is not so. According to the regulation 'Law and Custom of Land War,' the sole duty imposed on Governments is to give instructions to their armies in accordance with the provisions contained in the aforesaid regulations. Once made known, these provisions will become part of the usual military instruction, and any infringement of them must bring the offender under those penal laws which safeguard the discipline of armies. It cannot be denied, however, that this sanction is not sufficient to prevent absolutely any danger of individual transgressions. It is not only the military leaders on whom depends the observance of these regulations; they must equally be respected by officers, non-commissioned officers, and private soldiers. Governments cannot, therefore, guarantee with positive certainty that the orders which they have given in compliance with this general agreement will be observed without any exception during the course of a war. Under these circumstances it is as well to face the consequences of possible violations of the provisions of the regulation, and to prepare for them in accordance with the following principle of private law: He who, by a deed contrary to law, infringes, intentionally or by carelessness, the rights of another, is bound to make good to that other any damage which may result from his action. This principle is equally applicable in the sphere of the law of nations,

and notably in the case with which we are concerned. Nevertheless, we cannot here maintain the theory of a subject's misdeed, according to which a State is only responsible if lack of care or of supervision can be proved against it. The cases which arise most frequently are those in which no negligence can be ascribed to the Government itself; if, where these occur, the persons injured as a result of the violation of the law could not seek redress from the Government, but could only have recourse to the guilty officer or soldier, this would mean, in the majority of cases, that they would be unable to obtain the compensation due to them. We hold, therefore, that the responsibility for any illegal act, committed contrary to this regulation, by any members of the armed force of any country, should be borne by the Government of the country."

Is it not an admirable passage? According to the Convention of 1899, Governments had only one obligation, namely, to give to their armed forces instructions in accordance with the Regulation Concerning Law and Custom of War. Did the German delegate realise that eight years after this Convention was signed his country had neglected to fulfil this obligation, that it had not given those necessary instructions? Did he realise that, on the contrary, his Government had allowed the official publication of the treaty, "Kriegsbrauch in Landskriege," which emanated from the General Staff, and was in constant and flagrant contradiction to the decreed regulation? However this may be, whilst asserting his confidence in the Governments which adopted this regulation, he proposed the introduction of a clause rendering such Governments responsible for any violations committed by their subordinates, thus obliging them to take the necessary measures of prevention, or to bear the burden of making good the damage caused by such violations.

The proposed amendment was in its turn amended. It was agreed to suppress the distinction between belligerents and neutrals, and to say nothing, for the time being, as to compensation. The Article, in its final form, ran as follows: "The belligerent party which shall violate the provisions of the present regulation shall be bound to make any compensation which may be necessary, and shall be responsible for every act committed by persons belonging to its armed forces."

Here, then, we have an international agreement, most important in its bearing on the present war, sanctioned by an express

provision inserted in the law itself. This marks very considerable progress. An essential condition of the progress of International Law is that it should adopt the fundamental principles recognised by the Legislatures of all civilized nations, and adapt them to the control of associations of individuals, each of which possesses its own laws for internal affairs. International Law cannot claim to lay down new principles, it must simply gather its inspiration from those already existing, and in this way international justice will be established without shock or violence, simply by the extension to associations of those rules of law which are applicable to individuals. This fact has been recognised by the introduction of this sanction at the Conference of the Hague in 1907. Every legal code contains the principle of law, according to which "any damage caused by illegal action must be redressed." Why should not this principle, universally recognised as the basis of private law, lie equally at the root of national law? Is it conceivable that an illegal wrong caused by one person to another has to be redressed, but that a similar wrong caused by a nation, which is after all merely an aggregate of persons, need not be redressed? Such an idea is contrary to the whole conception of justice. Even were the sanction not expressed in the law, it would none the less exist as a necessary corollary to the prohibitive commands laid down by the law; but the fact of its being written down renders all discussion of principle impossible, and makes it binding, not merely as a natural consequence of the established law, but as a legal obligation. What is the consequence of this? It follows that every damage caused to individuals, to States or to communities, in violation of the Regulation Concerning Law and Customs of War requires redress, and that the treaty which concludes peace must impose such redress in full. Every village burnt or destroyed, every town committed to the flames, every house pulled down or pillaged, every tax imposed contrary to the regulation, every excessive requisition, every bombardment of open places, every destruction of public buildings, every outrage upon the honour, the property or the lives of citizens are so many items in the long bill which will have to be paid.

If Germany has neglected or has refused to give her officers instructions in accordance with the Regulations agreed upon in 1899, and if on the contrary she has left in their hands the "Kriegsbrauch in Landskriege" of 1902, which sets up as a

system all the excesses committed in the present war, she must bear the consequence of such action, for it is a grave crime against International Law.

The real weakness of this sanction lies in the fact that its application is practically dependent upon the success of the injured party. The victorious victim will of course impose its will upon the defeated criminal, but if the victim be defeated, how shall compensation be exacted from the victor? Certainly the obligation which has been formally accepted does not, and indeed cannot, make this distinction, for the principle, once adopted, does not admit of limitations; if by actions contrary to the law damage is caused, this damage must be made good, whether or no the guilty party emerges victorious from the struggle.

Let us see what happened in 1870. Victorious Germany demanded from France a very high war indemnity, but French negotiators succeeded in reducing it considerably; whereupon France proceeded, on three successive occasions, to vote large sums to be employed in repairing, as far as possible, the injury which individuals had suffered. Was it not this reduction of the indemnity which enabled France to repair these injuries, and was not the need for this one of the arguments successfully advanced by her negotiators? Surely, then, it was the victorious country which ultimately made good the damages she had caused? Again, Germany annexed Alsace and Lorraine, but what did she then do? She paid to the inhabitants fifty-seven million of francs as indemnity for the harm they had suffered. Was not this compensation bestowed on the conquered?

Nevertheless, in 1870 there existed no convention on this subject, no law, no written document; International Law was still in its infancy. To-day we have conventions, we have rules, we have a law which can be applied, and happily we are seeing the cause of justice slowly advancing to victory. It will be the honour of the allied nations, after having fought for law and justice, to impose on the guilty country, besides the punishment which it has earned, the full and complete reparation of all the damage of which it has been the cause.

Finally, there are penal sanctions of International Law, for certain infringements of this law constitute actual crimes or offences against common law. Spying, for example, is an offence against common law. The spy, it is everywhere admitted, falls under the authority of martial law, and can be judged and pun-

ished by it. Pillage, marauding, assassination under certain circumstances, are all crimes against the common law, and can be punished as such. In Port Arthur, at the time of the Russo-Japanese War, martial law recognised theft committed by an armed man as a crime punishable by the military court. The Germans, in 1870, declared that French combatants not wearing the uniform of regular soldiers should be shot. Conventions have accepted this theory by refusing to the "franc-tireur" the treatment accorded to a prisoner of war, counting him as a brigand or an assassin.

A new offence against common law has appeared during this present struggle, namely, the unjust war waged by submarines against merchant vessels; they deliberately attack and kill non-combatants and destroy private property, deeds which are not only a breach of International Law, but of the unwritten law of nations and the law of nature. The question of sanction has immediately arisen. This sanction takes a double form. There are two criminals, he who is responsible for giving the order and he who executes the order; both are implicated, but in the case of the former the sanction will only take effect later, whilst to the latter it can be immediately applied. Should, then, those men who devote themselves to these barbarous exploits be considered simply as prisoners of war or should this privilege be denied them on the grounds of their responsibility for the crimes they have committed, and should they merely be treated as common law prisoners awaiting their trial? There is little doubt as to the answer. The theory is absolutely accepted that a belligerent can treat as common law crimes such offences as obviously run counter to International Law and to the law of nations universally recognised and accepted. Certainly no act is more widely reprobated and is in more obvious contradiction to both the written and unwritten law of nations, than that of attacking and killing non-combatants and destroying their property. What is more, it is instructive to see that the German Government, on learning that the imprisoned crews of the submarines were treated by England as common law prisoners, did not attempt to justify what they had done, but tried to protect them by saying that, as they acted in obedience to orders, they could not be held personally responsible. Such a defence is equivalent to an acknowledgment that the act in itself is unjustifiable. What value, then, has this objection? Absolutely none. It is equally true that a spy acts in obedience to orders, and yet he can be tried by court martial;

and does not such a line of argument overlook the fundamental principle of written law, contained in the German as in all other codes, that an offence or crime committed in obedience to command or instigation is punishable, so long as it is not the work of anyone mentally deficient, who allows himself to be influenced by others, without realising the evil which they are forcing him to do? Should we ever see in Germany a murderer of the Kaiser acquitted, because he was acting under the order and instigation of a sect of anarchists? But this is not war, you may retort. True, but neither is it war to sink merchant vessels with their crews, without ascertaining that they are carrying contraband of war or without seizing and conveying them into harbour. War requires that there shall be two military parties in arms against one another, and that their encounter shall involve actual fighting; when they are actually engaged war is being waged. Otherwise a state of war may exist, but war is not actually being waged. The Germans, justly in accordance with this theory and this law, have been the first to shoot "franc-tireurs," on the ground that they have no right to take part in war. It is equally legitimate to shoot soldiers who, weapon in hand, attack non-combatants, on the ground that they have no right to wage war upon unarmed non-combatants; such an act is murder, and the murderer can be legally punished. The two situations are identical—a civilian has no right to make war against a soldier, but neither has a soldier the right to make war against a civilian—the punishments may therefore be identical.

This penal sanction may come into force sooner or later, and in addition to the reparation for the damage done the responsible authors and their agents may be court-martialed.

In the meantime this deliberate and continuous violation of the law will bring about action by nations who hitherto have remained out of the conflict, and they will by their action introduce an immediate and appropriate sanction.

Thus International Law exists always, and it is gathering renewed strength from present events. Violated it may be, but it is also strongly sanctioned, and the final sanction which is being prepared will be a spur driving all nations forward to the comprehension of their true interests—the establishment of an international justice, which all nations shall combine to support.

LONDON: PRINTED BY C. F. ROWORTH, 88, FETTER LANE, E.C.